

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MACLEAN TOWNHOMES, LLC, a
Washington limited liability company, as
assignee of American Heritage Builders, a
Washington corporation,

Plaintiff,

v.

CHARTER OAK FIRE INSURANCE
CO., a foreign insurance company,

Defendant and Third-Party
Plaintiff,

v.

FIRST SPECIALTY INSURANCE
COMPANY, a foreign insurance
company,

Third-Party Defendant.

CASE NO. C06-1093BHS

ORDER REGARDING
REASONABLENESS
HEARING AND TRIAL

On July 15, 2008, the parties filed a Stipulation Regarding Reasonableness Hearing and Trial. Dkt. 163. The parties requested that the Court issue an order that includes the following:

1. A reasonableness hearing will be conducted beginning on September 8, 2008. At that time the Court will consider all evidence presented by MacLean and Charter Oak in light of the applicable elements set forth under Washington law. To the extent the Court concludes that the underlying settlement is reasonable, that is the amount of MacLean's judgment against AHB for purposes of this lawsuit. To the extent the Court concludes the underlying settlement is unreasonable, or the product of fraud or collusion, the Court will make a finding as to the appropriate reasonable value for the underlying claim as required under Washington law, and that amount, if any, will be deemed to be the amount of MacLean's judgment against AHB for purposes of this lawsuit. The Court will set aside two weeks for said reasonableness hearing. MacLean and Charter Oak are to

1 exchange witness information and exhibits in accordance with the attached
2 stipulation of MacLean and Charter Oak.

3 2. Trial on all remaining coverage and bad faith issues will
4 proceed on October 21, 2008. Trial will be scheduled for two weeks. The
Court will order a pretrial conference on the Court's calendar following the
conclusion of the reasonableness hearing.

5 *Id.* at 6-7.

6 The Court is in agreement as to the separation of the reasonableness hearing and
7 the trial and the proposed dates of both. Those proceedings, however, will be subject to
8 the business of the Court and, as such, the Court will not "set aside" definite periods of
9 time to conduct the proceedings. Moreover, the presentation of evidence at the
10 reasonableness hearing may be limited in accordance with the recent Washington Court
11 of Appeals, Division 1, ruling in *Heights at Issaquah Ridge Owners Ass'n v. Derus*
12 *Wakefield I, LLC*, --- P.3d ----, 2008 WL 2636552 (July 7, 2008).

13 In addition, Plaintiff's Motion to Set Reasonableness Hearing (Dkt. 98) is now
14 moot.

15 Therefore, it is hereby

16 **ORDERED** that the parties' Stipulation Regarding Reasonableness Hearing and
17 Trial (Dkt. 163) is **GRANTED in part** as stated herein. Plaintiff's Motion to Set
18 Reasonableness Hearing (Dkt. 98) is **DENIED** as moot.

19 The Court will issue a new scheduling order that will reset the relevant pretrial
20 dates.

21 DATED this 16th day of July, 2008.

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25 BENJAMIN H. SETTLE
26 United States District Judge
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